STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO	))	
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS	))	**Docket Nos. 09-0306, 09-0307 09-0308, 09-0309, 09-00310,**
	)	**and 09-0311 (Consolidated)**
ILLINOIS POWER COMPANY d/b/a AmerenIP	))	
Proposed general increase in delivery service rates	))	

REPLY BRIEF ON REHEARING
ON BEHALF OF
THE PEOPLE OF THE STATE OF ILLINOIS
AND
THE CITIZENS UTILITY BOARD

The People of the State of Illinois ("the People" or "AG"), by and through Lisa Madigan, Attorney General of the State of Illinois, and the Citizens Utility Board ("CUB")(together "AG/CUB"), pursuant to Part 200.800 of the Rules of Practice of the Illinois Commerce Commission ("the Commission"), 83 Ill. Admin. Code 200.800, hereby file their Reply Brief on Rehearing in the above captioned Ameren Illinois Utilities ("Ameren," the "Company," or "AIU") proceeding.

Introduction

In its Notice of Commission Action entered on June 15, 2010, the Commission designated eight questions that it will consider on rehearing. Those questions are:

(1) What is the appropriate application/interpretation of 83 Ill. Adm. Code 287.40 and 220 ILCS 5/9-211 in the context of adjustments to accumulated depreciation reserve?

(2) If an adjustment to accumulated depreciation reserve is appropriate, what methodology should be employed in making the adjustment?

(3) To the extent that the Commission wants to alter the manner that it adjusts accumulated depreciation reserve, what if any, steps must be taken before doing so?

(4) What is the appropriate adjustment, if any, to accumulated depreciation reserve in this proceeding (including any of the alleged "technical corrections")?
   a. What is the appropriate valuation of net plant at the end of February 2010?

(5) Is an adjustment to Accumulated Deferred Income Taxes ("ADIT") appropriate when the reserve for accumulated depreciation is adjusted?
   a. If so, what is the appropriate calculation of the adjustment to ADIT as of the end of the *pro forma* period in this proceeding?

(6) With regard to cash working capital, AIU argues that $3.9 million in capital costs should be netted against 9.4 million of late fee revenues.
   a. What is the appropriate methodology to determine the accuracy of the $3.9 million in capital costs?
   b. What is the appropriate methodology to determine whether the $3.9 million in capital costs should be netted against the $9.4 million of late fee revenues to offset the revenues with the capital costs?

(7) With regard to pension and other post-employment benefits, what, if any, adjustment is legally appropriate?

(8) With regard to the Public Utility Revenue Act ("PURA") tax and its recovery, it was the Commission's intent in its Order to exclude the PURA tax from the revenue requirement, treat the PURA tax as a pass through tax, have the PURA tax recovered through a volumetric charge, and have the PURA tax separately identified as a line item on the customer's bill as other pass-through taxes are identified. To the extent that parties seek clarification, the Commission grants rehearing to address the clarifying questions of the parties on the expressed intent of the Commission in its Order.

Notice of Commission Action of June 15, 2010.

In this Reply Brief on Rehearing, AG/CUB will address the first five of these questions as they relate to arguments raised by AIU, the Illinois Industrial Energy Consumers ("IIEC"), and the Commission Staff ("Staff") which focus on the critical examination of how to properly assess the value of plant in service when calculating a utility's rate base. As AG/CUB stated in their Initial Brief on Rehearing, the Commission was correct in its April 27, 2010 Final Order

when it concluded that accumulated depreciation of all existing and forecasted plant in service must be recognized in the calculation of the AIU rate bases. AG/CUB, IIEC and Staff all agree in their respective testimony and initial briefs on rehearing that both the Commission's rules and the Public Utilities Act ("PUA" or "Act") require that an adjustment recognizing the accumulated depreciation of embedded plant, along with the depreciation of the *pro forma* forecasted plant in service, must occur.

I. The Proper Interpretation of 83 Ill. Adm. Code 287.40 Must Recognize Growth in Gross Plant Net of Concomitant Growth in the Accumulated Reserve for Depreciation ("Net Plant"). (Question 1)

As noted above, the Commission, in its Notice on Rehearing, asked the parties to address the appropriate interpretation of Part 287.40 of the Commission's rules. That rule states:

> A utility may propose pro forma adjustments (estimated or calculated adjustments made in the same context and format in which the affected information was provided) to the selected historical test year for all known and measurable changes in the operating results of the test year. These adjustments shall reflect changes affecting the ratepayers in plant investment, operating revenues, expenses, and cost of capital where such changes occurred during the selected historical test year or are reasonably certain to occur subsequent to the historical test year within 12 months after the filing date of the tariffs and where the amounts of the changes are determinable. Attrition or inflation factors shall not be substituted for a specific study of individual capital, revenue, and expense components. Any proposed known and measurable adjustment to the test year shall be individually identified and supported in the direct testimony of the utility. Each adjustment shall be submitted according to the standard information requirement schedules prescribed in 83 Ill. Adm. Code 285.

83 Ill. Adm. Code 287.40.

As IIEC noted in its Brief on Rehearing, Section 287.40 is not a restriction of the information the Commission can consider when evaluating proposed *pro forma* additions. In fact, the Commission's decision adopting 287.40 stated that:

> Burdensome or not, Staff avers that the goal of a rate case is to identify a utility's revenue requirement. If only selected adjustments, or not all adjustments, are made, Staff contends that the resulting revenue requirement will be at least

> inaccurate and perhaps result in excessive or deficient rates being charged to customers…
>
> Rather, the Commission will revise Section 287.40 to state that a utility 'may' propose pro forma adjustments with the understanding that Staff, or other intervenors, may ask utilities to provide information regarding pro forma adjustments for other known and measurable changes during discovery. **Allowing Staff and intervenors to seek such information and recommend their own pro forma adjustments, or oppose pro forma adjustments proposed by utilities, will assist the Commission in establishing the most appropriate rates.**

Second Notice Order, *Revision of 83 Ill. Adm. Code 285 and Adoption of 83 Ill. Adm. Code 286 and 287*, Docket No. 02-0509, March 26, 2003 at 31, 32; IIEC Initial Brief on Rehearing at 12 (emphasis added).

The Commission's Order in the rulemaking clearly contemplated proposed adjustments that modified a utility's *pro forma* proposals. The decision supports the interpretation of Part 287.40 the Commission articulated in its April 27, 2010 Order in this case – a position that AG/CUB, Staff, and IIEC all agree is the correct interpretation based on the facts and the law. Staff Initial Brief on Rehearing at 8; AG/CUB Corrected Initial Brief on Rehearing at 4-9; IIEC Initial Brief on Rehearing 8-23. Both the Commission's rules and the Act require that an adjustment recognizing the accumulated depreciation of embedded plant, along with the depreciation of the *pro forma* forecasted plant in service, must occur. As Staff notes in its Brief on Rehearing:

> Section 287.40 cannot reasonably be viewed as prohibiting the Commission from considering whether or not a utility's pro forma adjustment for post-test year plant additions also warrants adjustments to the accumulated depreciation reserve and accumulated deferred income tax reserve ("ADIT"). In the context of a pro forma adjustment for post-test year plant additions, consideration of whether the adjustment to plant additions warrants adjustments to the accumulated depreciation reserve and ADIT is inherent in the determination of whether the adjustment is just and reasonable and appropriate rates can be established.

Staff Initial Brief on Rehearing at 3, 4; Staff Ex. 1.0RH at 33.

Ameren stands alone in its stubborn defense of an accounting proposal that effectively ignores the depreciation on embedded plant that it knows has occurred but refuses to acknowledge, in violation of Part 287.40 of the Commission's rules and the Act. The Company avers that Part 287.40 "serves to mitigate regulatory lag", and that, therefore, only known and measureable capital additions – not the concomitant growth in depreciation that occurs on embedded plant and the increases in accumulated deferred income taxes during the *pro forma* period – should be evaluated by the Commission as it established the Company's rate base. Ameren Brief on Rehearing at 3-5. The Company further argues that its interpretation of Part 287.40 restates historical test year plant "as if the (*pro forma*) additions were made during the test year." *Id.* at 4.

Ameren's interpretation of Part 287.40 is simply wrong as a matter of fact and law. AG/CUB witness Effron, IIEC witness Michael Gorman and Staff witness Theresa Ebrey agreed that a failure to recognize the associated changes to plant-related components of rate base overstates the rate base, with significant negative impact for ratepayers. *See* AG/CUB Ex. 1.0R at 3-5; IIEC Ex. 10.0RH at 3-4; and ICC Ex. 1.0 at 12. Moreover, as noted by Mr. Effron, recognizing post-test year growth in plant while ignoring post-test year growth in depreciation reserve would allow Ameren to earn a return not only on post-test year plant additions that are financed by investors, but also on post-test year plant additions that are financed by customers. Reducing the Company's adjustment for post-test year plant additions by related growth in the depreciation reserve is doing nothing more than allowing investors to earn a return on their actual investment in utility operations, but only on that actual investment. AG/CUB Ex. 1.0R at 4.

An interpretation of "plant investment" to mean net plant, as opposed to gross plant, is consistent with Part 285.2005(b) of the Commission's rules, which specifically addresses the presentation of jurisdictional rate base. Paragraph (b) of that rule makes reference to the presentation of the "level of rate base investment attributable to the provision of services to jurisdictional customers," in other words, the rate base on which the utility will be allowed to earn a return in the determination of its revenue requirement. Paragraph c) of that section explicitly identifies the components of rate base as including gross utility plant in service at original cost, reserve for accumulated depreciation, net utility plant in service, and other individual items. Thus, the term "investment attributable to the provision of services to jurisdictional customers" in paragraph b) is defined as including the gross utility plant *net of the reserve for accumulated depreciation*, in other words the net utility plant. If the term "investment" as it used in 83 Ill. Adm. Code 285.2005 encompasses net plant, then it is only logical and consistent that the plant investment referenced in 83 Ill. Adm. Code 287.40 would mean net plant.

Ameren's calculation of "net plant", however, ignores the accumulated depreciation that it knows would and did occur on embedded plant between the end of the test year, December 31, 2008, and the end of the *pro forma* period. Instead, Ameren argues that only the depreciation associated with the *pro forma* additions during the post test year period should be reflected in rates. Ameren Brief on Rehearing at 5. This piecemeal adjustment to plant violates the matching principle inherent in the Commission's test year rules, by mismatching revenues based on unadjusted test year data with costs inflated by post-test year additions to rate base. *Business and Professional People for the Public Interest v. ICC,* 146 Il. 2d 175, 238 ("BPII"). IIEC Brief on Rehearing at 14. The matching principle inherent in test year ratemaking

requires that accumulated depreciation must be accounted for and recognized over the same period used to account for plant in service.

The Commission's rule on *pro forma* adjustments is clear and unambiguous. *See People ex rel. Madigan v. Ill. Commerce Comm'n,* 231 Ill.2d 370, 380 (2008) ("Administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes."); *Reda v. Advocate Health Care,* 199 Ill.2d 47, 55 (2002) ("Where the language is clear and unambiguous, we must apply it as written." Part 287.40 states that *pro forma* adjustments "shall reflect (known and measureable) changes affecting the ratepayers in plant investment." 83 Ill.Admin. Code Part 287.40. By ignoring these known and measureable changes, Ameren proposes that the Commission approve an inflated rate base and, accordingly, unjust and unreasonable rates.

Ameren characterizes the recognition of accumulated depreciation on embedded plant as an inappropriate "roll forward" of test year accumulated depreciation that violates the test year rules and the matching principle. Ameren Brief on Rehearing at 5-12. Ameren's distortion of the test year rules and the matching principle should be rejected. Part 287.40 requires a recognition of "all known and measureable changes" within the context of *pro forma* adjustments: "**These adjustments shall reflect changes affecting the ratepayers in plant investment, operating revenues, expenses, and cost of capital where such changes occurred during the selected historical test year or are reasonably certain to occur subsequent to the historical test year within 12 months after the filing date of the tariffs and where the amounts of the changes are determinable**." 83 Ill.Admin.Code Part 287.40. Accounting for accumulated depreciation on embedded plant in the post test year period is no more "rolling forward" than

Ameren's request for *pro forma* plant additions. Each recognizes changes that are "known and measureable."

As Mr. Effron correctly noted, recognizing post-test year growth in plant while ignoring post-test year growth in depreciation reserve would allow Ameren to earn a return not only on post-test year plant additions that are financed by investors, but also on post-test year plant additions that are financed by customers. Reducing the Company's adjustment for post-test year plant additions by related growth in the depreciation reserve is doing nothing more than allowing investors to earn a return on their actual investment in utility operations, but only on that actual investment. AG/CUB Ex. 1.0 at 4.

The appropriate interpretation and application of 83 Ill. Adm. Code 287.40 in the instant case is for the Commission to consider whether a utility-proposed adjustment for *pro forma* plant additions properly reflected the concomitant *known and measureable* "changes affecting the ratepayers in plant investment." 83 Ill.Admin.Code Part 287.40. Ameren's proposed *pro forma* plant additions ignored the adjustments to the accumulated depreciation reserve and ADIT that are known and measureable. Accordingly, Ameren's flawed, illegal approach to calculating rate base and, accordingly, its revenue requirement, must be rejected if just and reasonable rates are to be established in this case.

The PUA requires that the Commission establish "just and reasonable" rates. 220 ILCS 5/9-101, 9-201. A "just and reasonable" rate balances the interests of both the investor and the customer. *Federal Power Comm'n v. Hope Gas CO.,* 320 U.S. 591, 610 (1943). Illinois courts have adopted the standard enunciated in *Hope* and applied it to the regulation of utilities in Illinois: "'The rate making process under the act, i.e., the fixing of 'just and reasonable' rates[,] involves a balancing of the investor and the consumer

interests.' " *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n (1953)*, 414 Ill. 275, 287, 111 N.E.2d 329, quoting *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944). This principle of balancing interests is codified in Section 9-211 of the Act: "The Commission, in any determination of rates or charges, shall include in a utility's rate base *only the value* of such investment which is both prudently incurred and used and useful in providing service to public utility customers." 220 ICLS 5/ 9-211 (emphasis supplied). The balancing referenced by the Courts demands that any *pro forma* plant additions adjustment proposal also recognizethe concomitant changes in depreciation for purposes of valuing the rate base. To do otherwise results in unjust and unreasonable rates.

Ameren makes two final arguments to support its misreading of the ICC's rules. The Company first argues that the April 27th Order's application of an accumulated depreciation adjustment on embedded plant "could lead – and in this case has led – to a decrease to rate base net plant, even if the utility demonstrates a trend of increasing actual net plant." Ameren Brief on Rehearing at 10. These arguments, however, miss the mark. As discussed further in Part II *infra*, Mr. Effron's proposed adjustment particularly avoided such an outcome. In fact, Mr. Effron's adjustment matches accumulated depreciation on plant with the *pro forma* plant in service based on *actual* information. Accordingly, Ameren's point is inapplicable.

Ameren also argues that any reliance on Section 9-211 of the Act as support for the concomitant adjustment to accumulated depreciation on embedded plant is misplaced because "the Commission" has argued against such an interpretation before the appellate court. Ameren Brief on Rehearing at 12-13. This argument amounts to rhetoric. "The Commission", not

surprisingly, defended its order in the recent ComEd rate case, ICC Docket No. 07-0566. Both the AG and CUB, as well as IIEC, appealed that Order and argued, consistent with this case, that Part 287.40 and the Public Utilities Act (including Section 9-211) require a recognition of post-test year growth in accumulated depreciation. A decision from the Second District on that appeal is pending. The fact that the Commission defended its order in that appeal and rejected arguments propounded by AG/CUB and IIEC should not affect the Commission's decision in this case. Indeed, Ameren's point suggests that it believes the Commission is not free to examine the record evidence and "have the power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding", which directly conflicts with the Illinois Supreme Court's decision in the *Miss. River Fuel Corp.* case. *Miss. River Fuel Corp, v. Ill. Commerce Comm'n*, 1 Ill. 2d at 513 (1953).

In this case, AG/CUB, IIEC and Staff all agree that the Commission was correct in its April 27, 2010 Final Order when it concluded that accumulated depreciation of all existing and forecasted plant in service must be recognized in the calculation of the AIU rate bases. Section 287.40 and the Public Utilities Act demand such an adjustment to accumulated depreciation reserve. Ameren's one-sided arguments are inconsistent with both the facts and the Act, and should be rejected.

II. The Appropriate Methodology for Adjusting the Accumulated Depreciation Reserve Matches the Included Plant in Service with the Accumulated Depreciation of All Plant as of the Same Date. (Question 2)

As noted earlier in this Brief, Staff witness Theresa Ebrey, IIEC witness Michael Gorman and AG/CUB witness David Effron all agreed on the principle that the accumulated depreciation for

all post test-year plant included in the rates base must be recognized in the Commission's valuation of the Ameren companies' rate base – not just the small recognition of accumulated depreciation associated with the *pro forma* plant claimed by Ameren. Accordingly, from the Commission's perspective in answering the question as to the methodology of reflecting accumulated depreciation reserve, it is important to recognize that all of the accounting witnesses not employed by Ameren agreed that the accumulated depreciation for *all post test-year plant* included in the rates base must be recognized in the Commission's valuation of the Ameren companies' rate base – not just the small recognition of accumulated depreciation associated with the *pro forma* plant claimed by Ameren.

As noted in the AG/CUB Initial Brief, Mr. Effron interpreted the Commission's rehearing directive in a different light, however, than Staff witness Ebrey and IIEC witness Gorman in terms of the actual calculation methodology for recognizing the post-test year accumulated depreciation. As Mr. Effron explained, the Commission now has the *actual* balances of accumulated depreciation as of February 28, 2010. [1] AG/CUB Ex. 1.0RH at 7, Given this new, available, actual information, Mr. Effron concluded that the plant in service as of February 28, 2010 should be offset by the *actual* applicable balances of accumulated depreciation as of the same date, as shown on AG/CUB Exhibit 1.2b RH, page 2 of 2.

There exists ample evidence to support the proposal that the Company's forecasts of plant additions be trued up to actual balances. There is also ample evidence that the *pro forma* additions to plant based on the Company's forecasts are no longer "known and measurable." Actual Ameren

[1] As the Commission stated in the Consumers Illinois Water Company rate case 93-0253 and 93-0303 (Consol.), "Just and orderly processing of rate increase requests mandates that we cannot permit a utility, which has complete discretion over the timing of its rate filings, to use the flexibility afforded by the known and measurable provision of our rules to transform a rate proceeding into a guessing game, in which the commission and the parties are left merely to await the ultimate resolution of the Company's plans, with large rate impacts hanging in the balance." 93-0253 and 93-0303 (Consol.) Order at 7.

data shows that plant in service as of February 28, 2010 was $24.6 million below the *pro forma* plant figure derived from the Company's forecasts (AG/CUB Exhibit 1.2b RH, page 2 of 2). If the actual plant is service as of February 28, 2010 was $24.6 million less than the Company's forecasts, then the Company's *pro forma* adjustment cannot today reasonably be described as "known and measurable." The *pro forma* plant additions included in rate base must be modified.

Accordingly, based on the evidence submitted on rehearing, the Commission should now find that the appropriate valuation of net plant at the end of February 2010 is the actual gross plant as of February 28, 2010 (exclusive of new business plant additions from December 31, 2008 through February 28, 2010) less the actual accumulated reserve for depreciation as February 28, 2010 (adjusted to be consistent with the plant as of that date exclusive of the referenced new business plant additions).

A. **AIU did not cite any errors or inconsistencies in the AG/CUB position**

While Ameren disagrees in principle with the recognition of accumulated depreciation on embedded plant during the post-test year, *pro forma* period, the Company finds no fault with Mr. Effron's methodology. In its Brief on Rehearing, Ameren provides a table that the Company describes as, "what would be necessary corrections to several of the proposed test year adjustments to accumulated depreciation, if the adjustment were in fact permissible and appropriate (and it is not)." Ameren Initial Brief on Rehearing at 15. Conspicuously absent from this table of alleged errors is any mention of Mr. Effron's proposed adjustment. In fact, Ameren lists no "necessary corrections" to the AG/CUB approach. Instead, the Company identifies "necessary corrections" to IIEC Corrected, Staff Corrected and Order Corrected in its table under footnote 7 of their Brief. Ameren Initial Brief on Rehearing at 15.

The criticisms cited by the Company apply only to the adjustments offered by IIEC and Staff. That is, AG/CUB is not proposing to penalize Ameren with a rate base deduction that is below pre-*pro forma* levels. On the contrary, even with the AG/CUB adjustment to the depreciation reserve, the net plant included in rate base is still well in excess of the net plant as of the end of the 2008 test year. As such, the Company's criticism of "Staff's hybrid – and largely undefined – 'substantial' additions test' (Ameren Initial Brief on Rehearing at 16) also is not relevant to the AG/CUB position.

B. Staffs Criticism of AG/CUB Witness David Effron's Methodology is Unwarranted.

Staff agreed with Mr. Effron that actual balance of accumulated depreciation are now available. Staff, however, complains that Mr. Effron's approach should not be used in this case for two reasons. First, Staff argues, it would duplicate certain amounts already included in the rate base in the May 6 Order. Second, Staff states that the methodology would include plant additions in rate base that were not reflected in the *pro forma* adjustment the Company proposed in the case in chief and which have not been subjected to a review to evaluate whether they are prudent and reasonable. Staff Initial Brief on Rehearing at 9.

Both of these reasons offered by Staff are inaccurate and without merit. First, Staff's argument of "duplication" is based on its inaccurate rendition of the AG/CUB position. Simply taking the actual depreciation reserve as of February 28, 2010 and deducting it from the plant in service as of that date cannot result in any "duplication." Staff's claim of duplication is based on the adjustment described in their Initial Brief on Rehearing at 10, which is *not* the adjustment proposed by AG/CUB. As AG/CUB does not propose to add the depreciation reserve as of February 28, 2010 to the *pro forma* adjustment proposed by the Company (as claimed by Staff),

there is no duplication. The claim that "the amounts Mr. Effron calculated for accumulated depreciation and ADIT overstate the levels that should be allowed for ratemaking purposes"(*Id.)* is clearly erroneous, as the amounts of accumulated depreciation and ADIT calculated by Mr. Effron are *lower* than the amounts calculated by Staff.

The second criticism of Mr. Effron's adjustment offered by Staff is also without merit. Staff claims that actual plant balances as of February 28, 2010, which Mr. Effron proposes be used, include approximately $72.9 million total for other projects that were not a part of the *pro forma* plant additions, and that "to include additions that were not under consideration in the initial phase of this case only allows the AIU another bite at the apple." Staff Brief on Rehearing at 10, 12-14. The evidence, however, clearly shows that the actual plant balances at February 28, 2010 were $24.6 million *below* the Company's forecasts. By arguing that the appropriate valuation of net plant at the end of February 2010 should be based on the Company's forecasts rather than the actual plant balances as of that date, Staff, in effect, argues that Ameren should be authorized to earn a return on non-existent plant of $24.6 million. That position should be rejected.

Staff also argues that "the amount of gross plant is not an issue open for consideration on rehearing" *Id.* at 10. The Commission, however, specifically identified the question of "What is the appropriate valuation of net plant at the end of February 2010". Notice of Commission Action of June 15, 2010, question (4) (a). There would be no purpose in identifying this as an issue to be addressed on rehearing unless it was the Commission's intention to permit the parties to examine the actual plant in service at the end of February 2008 as well as the depreciation reserve as of that time. That is, the Commission had already identified in its June 15th Notice the issue of "the appropriate adjustment, if any, to accumulated depreciation reserve in this proceeding" as a matter to be addressed on rehearing. If it were the Commission's intent to simply deduct the adjusted

accumulated depreciation reserve from the plant in service based on the Company's forecasts, then there would be no purpose to setting the appropriate valuation of "net plant at the end of February 2010" as an issue to be addressed in the rehearing.

III. The Commission Does Not Need to Take any Particular Steps to Alter the Manner in which it Adjusts Accumulated Depreciation Reserve, So Long as it Follows the Appropriate Test Year Rules and Applies Them to the Facts of the Case Before it. (Question 3).

All parties to this proceeding had notice that the appropriate balance of accumulated depreciation reserve included in AIU's rate base would be a contested issue. This is not a case, as AIU suggests, of the ICC changing its mind in the midst of a contested case. AIU Initial Brief on Rehearing at 16, 20. Nor is this an instance of the Commission "alter[ing] the manner in which it consistently interpreted and applied Part 287.40." *Id.* As pointed out by Staff and IIEC, this very issue has been a contested one in ICC rate cases since 1984. Staff Initial Brief on Rehearing at 12; IIEC Initial Brief on Rehearing at 19. The Commission in the past has approved adjustments of the same type as it approved here: adjustments related to depreciation reserve and accumulated deferred tax balances are "appropriate and necessary" and plant-in-service adjustments and adjustment to accumulated reserve for depreciation should be made through the same date. Staff Initial Brief on Rehearing at 12, citing *Order, Alton Water Company Docket No. 83-0433,* May 30, 1984, p. 12, and *Order, Inter-State Water Company Docket No. 85-0166,* February 26, 1986, p. 5.

Contrary to Ameren's assertions, no additional steps need be taken by the Commission to properly reflect accumulated depreciation in a utility's rate base.[2] The Commission's April 27,

[2] While AG/CUB and IIEC all agree no rulemaking is necessary, it is worth noting that the Illinois Appellate Court has held that the decision as to whether an agency should proceed with the creation of a "general rule" on standards,

2010 Order enunciated a rationale, based upon the facts and law, that justified its concurrence with AG/CUB and IIEC that an adjustment for accumulated depreciation on embedded plant was necessary in conjunction with its approval of Ameren's requested *pro forma* plant additions. Nothing more is required of it. In short, the Commission is required to make specific findings based on the evidentiary record in the case consistent with Illinois law and articulate a clear rationale for its decision. The ICC need look no further than the very cases cited by Ameren to determine the boundaries of its discretion.[3] When the question of whether or not the ICC had improperly altered its manner of decision, Illinois courts found it had done so when:

- The ICC failed to base its decision on evidence in the record: "In the absence of evidence to support a significant change in treatment of operating expenses, we do not believe deference is owed to the Commission's policy decision regarding treatment of coal-tar cleanup expenses." *Citizens Utility Board v. Ill. Commerce Comm'n*, 166 Ill. 2d 111, 132 (1995) (noting an ICC rulemaking order regarding a coal tar remediation cost recovery rider was not based on substantial record evidence).
- The ICC did not point to a statutory provision, ICC regulation or prior Commission decision. *Illinois Power Co. v. Ill. Commerce Comm'n*, 339 Ill. App. 3d 425 at 439 (5th Dist. 2003). The Court concluded in that case that the ICC had "merely decided after the fact that a PVRR analysis should have been conducted in determining the prudence of an action that had already been taken." *Id.*
- The ICC considered "circumstances outside the test year" in a ComEd rate case without articulating a standard to do so. *Business and Professional People for the Public Interest v. Ill. Commerce Comm'n*, 136 Ill. 2d 192 (1989). The

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rather than on a more informal basis, with the agency. "The issue of whether an agency standard should be cast immediately into the mold of a general rule or whether the agency should proceed on a more informal basis adjusting its standards as the need arises was addressed by the United States Supreme Court in *Securities & Exchange Com. v. Chenery Corp.* (1947), 332 U.S. 194, 91 L. Ed. 1995, 67 S. Ct. 1575. *United Cities*, 133 Il. App. 3d at 448. There, the court interpreted a statute with the pertinent provisions essentially the same as the PUA and concluded that the choice between proceeding by general rule or by individual ad hoc litigation "is one that lies in the informed discretion of the administrative agency. (Accord, *NLRB v. Majestic Weaving Co*. (2d Cir. 1966), 355 F.2d 854.) Accordingly, we believe it is within the Commission's discretion to develop an interim rate standard without promulgating a rule." *Chicago v. Illinois Commerce Comm'n*, 133 Il..App.3d 435-447 (Ist Dist. 1985)..

[3] AIU also relies on *United Cities Gas Co. v. Ill. Commerce Comm'n*, noting that "agencies are bound not just by their rules, but also by prior custom and practice in interpreting those rules, especially where, as here, there was detrimental reliance on those interpretations." AIU Initial Brief on Rehearing at 17, citing *United Cities Gas Co. v. Ill. Commerce Comm'n*, 225 Ill. App. 3d 771, 782 (4th Dist. 1992) ("*United Cities*"). AIU fails to note in fact that on that same page, the Court concluded the "ICC is not precluded from changing its rate-making policy by excluding flotation costs attributable to unissued securities from the expenses utilities may recover from their customers." *United Cities* at 782. The Court also noted the utility failed to show "how it would be irreparably prejudiced by the ICC changing its policy as to this matter," *Id.*, a situation identical to the one before the ICC here.

> Commission failed to establish what circumstances or evidence would be relevant, *Id.* at 227, and in fact allowed consideration of evidence outside the test year. *Id.* at 229.

In the instant case, the Commission committed none of the errors noted above as highlighted by Illinois courts as beyond the Commission's authority. AG/CUB agree with IIEC's summary of the proceedings here: in this rate case proceeding, the Commission has received and evaluated (a) extensive evidence on proposals to measure the rate base used in setting Ameren's rates, (b) new evidence on the consequences of alternative methodologies, and a (c) comprehensive briefing of the legal issues raised by the various proposals, including the limitations of the PUA and pertinent judicial decisions. IIEC Initial Brief at 27. On the basis of that record, the Commission fully articulated its reasoning and the result of its analysis and deliberation. *Id.* Nothing more was required as a pre-condition for the Commission's action, and on rehearing, only a similar evaluation of the record on rehearing is required to affirm the Commission's decision in the April 29 Order. *Id.*

IV. Mr. Effron's Use of Actual Balances of Accumulated Depreciation As of February 28, 2010 – the Same Date For Which ProForma Plant Additions Is Used – Is the Most Accurate, Appropriate Adjustment to Accumulated Depreciation Reserve. (Question 4)

As AG/CUB previously noted, the Commission now has available the *actual* balances of accumulated depreciation as of February 28, 2010, as presented in the response to Attorney General Data Request AG 3.02. Those balances should now be used as the basis to adjust the balance of accumulated depreciation so that it is consistent with the plant in service included in rate base. Use of the actual balances eliminates the need to rely on assumptions and estimates to calculate the appropriate adjustment and results in an adjustment that is known and measurable with absolute

certainty. Ameren itself does not contest this fair and balanced approach as described above in Section III.

The appropriate adjustment to accumulated depreciation reserve in this proceeding is the adjustment necessary to match the balances of accumulated depreciation to the actual balances as of February 28, 2010. AG/CUB Ex. 1.0R at 9. The resulting accumulated depreciation balances are greater than those proposed by Ameren, but less than the balances in the Commission's Order. *Id.* at 10. The appropriate valuation of net plant at the end of February 2010 is the actual plant in service, exclusive of post test year new business plant additions, as of February 28, 2010, less the actual balances of accumulated depreciation (stated on a consistent basis) as of the same date. *Id.* This valuation of net plant is shown on Mr. Effron's Schedule DJE-2RH, attached to this Brief as Appendix A. It should be adopted by the Commission.[4]

[4] AG/CUB has provided the dollar variance between what AG/CUB has proposed vs. what Ameren has proposed regarding accumulated depreciation at the Rehearing phase:

Rehearing Revenue Requirement – AG/CUB vs. Ameren
Information reported (in thousands of dollars)

	CILCO-E	CIPS-E	IP-E	CILCO-G	CIPS-G	IP-G	Total
Plant	45	(6,322)	(11,235)	(783)	(6,399)	103	(24,591)
Accumulated Depreciation	(22,983)	(36,510)	(54,630)	(3,830)	(591)	(6,432)	(124,976)
ADIT	(8,043)	(156)	(14,844)	996	7,616	(11,340)	(25,771)
Rate Base	(30,981)	(42,988)	(80,709)	(3,617)	626	(17,669)	(175,338)
Pre-Tax Rate of Return	11.183%	11.523%	12.083%	10.818%	10.809%	11.453%	
Revenue Req. AG vs. Ameren	(3,465)	(4,953)	(9,752)	(391)	68	(2,024)	(20,517)

V. An Adjustment to Accumulated Deferred Income Taxes is Appropriate When the Reserve for Accumulated Depreciation is Adopted. (Question 5)

The parties and Staff do not appear to disagree on the appropriate adjustment to accumulated depreciation being tied to the outcome of the Commission's decision regarding the previous four questions. In particular whatever the Commission decides regarding the appropriate methodology for accumulated appreciate reserve (Question 2 on rehearing) would also apply to the adjustment to ADIT.

The parties and Staff opined:

- **Ameren: "**If the intent of the Order was to restate rate base as of February 2010, then an adjustment to restate ADIT arguably would be appropriate, provided that all other components of rate base were similarly restated to February 2010 balances." Ameren Initial Brief on rehearing at 25.

  To the extent the pro forma additions have any impact on ADIT, an adjustment for ADIT related solely to those additions is appropriate…" Ameren Exhibit 3.0RH at 15.

- **Staff: "**Staff notes that the Company itself included adjustments to ADIT for each *pro forma* adjustment that impacted the accumulated depreciation reserve. Thus, it is undisputed that one should also reflect the corresponding impact on ADIT when one adjusts the reserve for accumulated depreciation. To omit the corresponding adjustment to ADIT when the accumulated depreciation reserve is adjusted would be analogous to omitting the payroll tax impact of a *pro forma* adjustment to Payroll Expense for changes in head count or wage levels." Staff Initial Brief on Rehearing at 16, 17.

- **IIEC:** "Any post-Test Year rate base adjustments the Commission approves should take account of ADIT, as well as of Accumulated Depreciation.

  While it is important to measure the increase in rate base caused by post-test year plant additions, it also is necessary to recognize the decreases to the utility's test year rate base attributable to other factors. (Gorman, IIEC Ex.10.0RH at 9:201-203).

  Without recognizing all significant rate base adjustments over a consistent period, the Commission will not properly adjust the historical test year rate…" IIEC Initial Brief on Rehearing at 34-35.

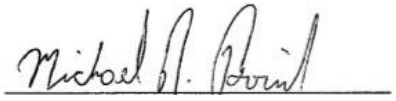
Accordingly, an adjustment to ADIT is appropriate in principle when the reserve for accumulated depreciation is adjusted. AG/CUB Corrected Initial Brief on Rehearing at 18; AG/CUB 1.0RH at 10. Accurate measurement of rate base requires a proper measurement of net plant, as well as recognition of the offsetting changes in the next most significant component of rate base, accumulated deferred income taxes. IIEC Ex. 10.0RH at 9.

VI. Conclusion

WHEREFORE, the People of the State of Illinois and the Citizens Utility Board respectfully request that the Commission adopt the positions set forth in their Initial and Reply Briefs on Rehearing in its Order on Rehearing in the above-captioned docket.

Respectfully submitted,

People of the State of Illinois
By Lisa Madigan, Attorney General

By: 

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